

On December 28, 2004 appellant, then a 60-year-old lead transportation security screener, filed a traumatic injury claim alleging that she injured her left knee at work on that date. She twisted her left knee when she was pushed backwards by an airport passenger who

accidentally hit her in the face while swinging his arm to put on his jacket. The Office accepted that appellant sustained a left knee strain and paid compensation for periods of disability. The Office also accepted that appellant sustained internal derangement and osteoarthritis of the left knee due to the December 28, 2004 employment incident.

Appellant participated in an authorized physical training program over an extended period and received treatment for her left knee condition from several attending physicians, including Dr. Xico R. Garcia, a Board-certified family practitioner. She returned to light-duty work for the employing establishment in mid 2005, but stopped work on January 26, 2006 when she underwent left partial medial meniscectomy and medial femoral chondroplasty surgery with excision of the suprapatellar plical band. The procedure was authorized by the Office.

On April 9, 2006 Dr. Garcia diagnosed internal derangement of the left knee due to the December 28, 2004 employment injury and indicated that appellant could return to light-duty work on April 10, 2006. He determined that appellant could stand for 1.5 hours per day, walk one mile during the 8-hour workday, continuously lift 8 pounds, intermittently lift 38 pounds and engage in bending, stooping, twisting, pulling, pushing, simple grasping and reaching above the shoulder for 8 hours per day.<sup>1</sup>

On April 10, 2006 the employing establishment offered appellant a full-time job as a lead transportation security officer. The position involved directing passengers to appropriate lanes, checking boarding passes and monitoring x-ray screeners and walk-through metal detectors. The job required standing for 1.5 hours per day, walking one mile during the 8-hour workday, continuous lifting of 8 pounds, intermittent lifting of 38 pounds and engaging in bending, stooping, twisting, pulling, pushing, simple grasping and reaching above the shoulder for 8 hours per day. The position did not require appellant to engage in squatting, kneeling or climbing. Appellant would have a half-hour lunch break and two breaks of 15 minutes each during her 8-hour workday.

Appellant accepted the lead transportation security officer position on April 11, 2006 and started the position on that date. She stopped working in the position on April 19, 2006 and resigned from the employing establishment.

In a June 30, 2006 letter, the Office advised appellant of its determination that the lead transportation security officer position was suitable and provided her with 30 days to provide justification for abandoning work in the position. The Office informed appellant that her compensation would be terminated if she did not return to the position or provide good cause for not doing so.<sup>2</sup>

In a July 25, 2006 letter, appellant argued that she stopped working in the lead transportation security officer position on April 19, 2006 because she was physically unable to

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<sup>1</sup> Dr. Garcia indicated that appellant could not engage in squatting, kneeling or climbing. He provided a similar assessment of her ability to work on May 20, 2006.

<sup>2</sup> On June 13, 2006 the employing establishment indicated that the lead transportation security officer position was still available to appellant.

perform the job duties. She indicated that Dr. Garcia was preparing a report which would show that she could not perform the position. However, appellant did not submit any additional medical reports within the allotted 30 days.

In a July 31, 2006 letter, the Office advised appellant that her reasons for neglecting to work in the lead transportation security officer position were unacceptable. The Office provided appellant 15 days to return to the position or else have her compensation terminated.<sup>3</sup> Appellant did not respond.

In a September 18, 2006 decision, the Office terminated appellant's compensation effective September 18, 2006 on the grounds that she neglected to work after suitable work was offered to her.

### **LEGAL PRECEDENT**

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."<sup>4</sup> However, to justify such termination, the Office must show that the work offered was suitable.<sup>5</sup> An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.<sup>6</sup>

### **ANALYSIS**

On December 28, 2004 appellant sustained a left knee strain and internal derangement and osteoarthritis of the left knee. On April 10, 2006 she returned to work as a lead transportation security officer, a position which involved directing passengers to appropriate lanes, checking boarding passes and monitoring x-ray screeners and walk-through metal detectors. The job required standing for 1.5 hours per day, walking one mile during the 8-hour workday, continuous lifting of 8 pounds, intermittent lifting of 38 pounds and engaging in bending, stooping, twisting, pulling, pushing, simple grasping and reaching above the shoulder for 8 hours per day.<sup>7</sup> Appellant stopped working in the position on April 19, 2006.

The evidence of record shows that appellant is capable of performing the lead transportation security officer position offered by the employing establishment and determined to be suitable by the Office in June 2006. The record does not reveal that the lead transportation

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<sup>3</sup> Appellant submitted clinical notes, dated between January and August 2006, in which attending physicians described her left knee condition. The reports did not address her ability to work. Appellant did not return to the lead transportation security officer position.

<sup>4</sup> 5 U.S.C. § 8106(c)(2).

<sup>5</sup> *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

<sup>6</sup> 20 C.F.R. § 10.124; *See Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

<sup>7</sup> The position did not require appellant to engage in squatting, kneeling or climbing.

security officer position was temporary or seasonal in nature.<sup>8</sup> In determining that appellant is physically capable of performing the lead transportation security clerk position, the Office properly relied on the opinion of Dr. Garcia, an attending Board-certified family practitioner.<sup>9</sup> On April 9, 2006 Dr. Garcia indicated that she could return to light-duty work on a full-time basis on April 10, 2006. He determined that appellant could stand for 1.5 hours per day, walk one mile during the 8-hour workday, continuously lift 8 pounds, intermittently lift 38 pounds, and engage in bending, stooping, twisting, pulling, pushing, simple grasping and reaching above the shoulder for 8 hours per day.<sup>10</sup> Dr. Garcia provided a similar assessment of her ability to work on May 20, 2006. The modified position offered by the employing establishment conforms to the restrictions set by Dr. Garcia whose work restrictions would allow appellant to perform the lead transportation security clerk position. The Board finds that the lead transportation security clerk position offered by the employing establishment is suitable.

As noted, once the Office has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified. The Board has carefully reviewed the argument submitted by appellant in support of her neglecting to work in the lead transportation security clerk position and notes that it is not sufficient to justify her neglecting to work in the position. Appellant contended that she stopped working in the lead transportation security officer position on April 19, 2006 because she was physically unable to perform the job duties, but she did not submit any medical reports supporting this argument.<sup>11</sup>

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective September 18, 2006 on the grounds that she neglected to work after suitable work was offered to her.

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<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claim, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4b (July 1997).

<sup>9</sup> There is no indication that appellant was not vocationally and educationally capable of performing the lead transportation security clerk position, as the position involved tasks which were similar to those required by her regular job.

<sup>10</sup> Dr. Garcia indicated that appellant could not engage in squatting, kneeling or climbing. He provided a similar assessment of appellant's ability to work on May 20, 2006.

<sup>11</sup> The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing her with an opportunity to accept the lead transportation security officer position after informing her that her reasons for neglecting to work in the position were not valid; see generally *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' September 18, 2006 decision is affirmed.

Issued: May 31, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board